Supreme C
FILED
FEB 17 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 75-1155

ROOSEVELT BUCHANON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals,
Seventh Circuit

ALLAN GOODLOE and
SHAW, HOWLETT & SCHWARTZ
225 South Meramec—Suite 324T
Clayton, Missouri 63105
314-725-9700
Attorneys for Petitioner

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statement	3
Reasons for Granting the Writ	4
Conclusion	5
Appendix:	
Item "A"—Order of United States Court of Appeals, Seventh Circuit on the Appeal	A-1
Item "B"—Order of the United States Court of Appeals, Seventh Circuit on Motion for Rehearing En Banc	A-2
Item "C"—Testimony of Government Witness, Clifford Desimone	A-3
Item "D"—Defendant's Proffered Instruction No. 3, Which Was Denied	A-5
Item "E"—Testimony of Defendant	A-6

Cases Cited

Shannon v. United States, 76 F.2d 490, 493 (10th Cir., 1935)	2, 5
Spinelli v. United States, 393 U.S. 910, 89 S.Ct. 584	2, 4

Statutes Cited

Supreme Court Rule 19.1(b) 2, 3
18 U.S.C. 1114 3
18 U.S.C. 2114 3
28 U.S.C. 1254(1) 2, 3

IN THE

SUPREME COURT OF THE UNITED STATES

No. .....

ROOSEVELT BUCHANON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals,
Seventh Circuit

Roosevelt Buchanon, your Petitioner, respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals, Seventh Circuit, entered in the above-entitled cause on December 30, 1975.

OPINIONS BELOW

This cause was decided by the United States Court of Appeals for the Seventh Circuit on December 30, 1975, see Appendix "A". A Petition for Rehearing or, in the Alternative to Transfer to Court En Banc, Court of Appeals, Seventh Circuit or in the

Alternative, to Stay the Mandate Pending Application for Certiorari was timely filed, and, subsequently denied by the Court of Appeals, Seventh Circuit, on January 30, 1976, see Appendix "B".

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on December 30, 1975, with an order denying Petition for Rehearing entered on January 30, 1976. The jurisdiction of this Court is invoked under 28 USC, Section 1254(1) and Rule 19.1(b) of the Rules of the Supreme Court of the United States.

QUESTIONS PRESENTED

There are two questions to be presented to the Supreme Court of the United States. They are as follows:

1. Whether the admission into evidence by the government testimony concerning the issuance of search warrants in the cause at bar is immaterial and so highly prejudicial to the Defendant, as to deny the Defendant due process.

2. Whether the denial of Defendant's proffered instruction on coercion as a defense to murder, thus denying Defendant of a legitimate defense, was proper, in light of the fact that there appears to be little, if any, federal precedent on this issue.

Cases Cited

Spinelli v. United States, 393 U.S. 910, 89 S.Ct. 584;

Shannon v. United States, 76 F.2d 490, 493 (10th Cir., 1935).

Statutes Cited

18 U.S.C. 1114;

18 U.S.C. 2114;

28 U.S.C. 1254(1);

Supreme Court Rule 19.1(b).

STATEMENT

Petitioner was indicted by the Federal Grand Jury in one count for violation of Section 1114, Title 18, United States Code, and in one count for violation of Section 2114, Title 18, United States Code.

A trial upon the issues resulted in Petitioner being found guilty upon each count for which he had been indicted; and, thereafter, Petitioner was sentenced to imprisonment for life on Count I and sentenced to imprisonment for twenty years on Count II, with the sentence under Count II to run consecutively with the sentence imposed under Count I.

During the trial, the Respondent called to the stand Clifford Desimone, whose testimony, and the objections to it by Petitioner, is reproduced in Appendix "C". The substance of this witness's testimony deals with the issuance of search warrants to search a certain Post Office Box No. 81. This testimony was admitted over Petitioner's objections.

At the close of the case the Court denied Defendant's Instruction No. 3, see Appendix "D". Said denial was made over Petitioner's arguments as to the propriety and necessity of the presentation of said instruction to the jury.

REASONS FOR GRANTING THE WRIT

An examination of the statement heretofore set forth in this Petition will reveal that Petitioner was charged by the United States of America for the offenses of killing a federal employee while in the performance of said employee's official duties and stealing government property from said employee's control. An examination of Appendix "C" will demonstrate that the testimony of Respondent's witness, Clifford Desimone, in reference to the search warrants was irrelevant and immaterial to the issues at hand. The obtainment of a search warrant by this witness for the Post Office Box No. 81, the envelope, and its contents was not an issue, as the Petitioner had not challenged the validity of said search warrant. The Petitioner's constitutional rights in reference to the Fourth Amendment and the "Due Process" clause were violated.

These rights are violated because the issue of probable cause to issue a search warrant is a legal question, not a question of fact for the jury, *Spinelli v. United States*, 393 U.S. 910, 89 S.Ct. 584. The production of search warrants, before the Defendant raises the issue of their validity, allows the government to introduce a self-serving, immaterial statement that gives the aura of judicial credence to the fact that there was information that indicated the guilt of the Defendant. Such a practice is enough departure from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's power of supervision.

The admission of such evidence in the District Court, which is sanctioned by the Court of Appeals in its affirmance of the lower court's decision, which is immaterial, yet highly prejudicial to the Petitioner in the eyes of the jury, raises an issue upon which a definitive ruling by the Supreme Court is required.

An examination of Appendix "D" will demonstrate that the proffered instruction of the Petitioner is relevant to the issues

at hand. The District Court denied submission of said instruction to the jury. Said denial was improper for the following reason. The denial of said instruction eliminates the defense that there is a legal excuse for Petitioner's conduct.

To be a legal excuse, the coercion must be immediate and of such a nature as to induce a well-founded fear of impending death or serious bodily injury. *Shannon v. United States*, 76 F2d 490, 493 (10 Cir. 1935). According to the testimony of the Defendant, as in Appendix "E", such a situation existed in this case.

Statements that this defense is not applicable to murder cases are incorrect statements of what the law is or what the law should be. All such statements deny a Defendant one of his proper defenses. These statements skip a step in the judicial process and assume a legal conclusion as to the definition of certain acts, such assumptions being highly prejudicial to the Defendant. Acts are not "murder" until a jury so decrees in a verdict. By assuming that certain acts are murder, and using such assumptions as grounds for denial of the above instruction, the Court denies Defendant of one of his rights. That right is the right of the Defendant to have the jury consider the "coercion or compulsion" factor as a defense to the prosecution's claim that the jury label Defendant's acts as murder.

CONCLUSION

Therefore, it is respectfully submitted that this Petition for Writ of Certiorari should be sustained.

SHAW, HOWLETT & SCHWARTZ
225 South Meramec—Suite 324T
Clayton, Missouri 63105
725-9700
Attorneys for Petitioner

APPENDIX

EXHIBIT A

Unpublished Per Curiam Order

United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois 60604

December 30, 1975

Before

Hon. Thomas E. Fairchild, Chief Judge

Hon. Luther M. Swygert, Circuit Judge

Hon. Philip W. Tone, Circuit Judge

United States of America, Plaintiff-Appellee, No. 75-1585 vs. Roosevelt Buchanan, Defendant-Appellant.	Appeal from the United States District Court for the Eastern District of Illinois East St. Louis Division No. 75 CR 17 E James L. Foreman, Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Illinois, East St. Louis Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, in accordance with the order of this Court entered this date.

EXHIBIT B

United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois 60604

January 30, 1976

Before

Hon. Thomas E. Fairchild, Chief Judge

Hon. Luther M. Swygert, Circuit Judge

Hon. Philip W. Tone, Circuit Judge

United States, Plaintiff-Appellee, No. 75-1585 vs. Roosevelt Buchanan, Defendant-Appellant.	Appeal from the United States District Court for the Eastern District of Illinois, East St. Louis Division. (75 Cr 17 E)

On consideration of the petition for rehearing and suggestion that it be reheard *en banc* filed in the above-entitled cause, no judge in active service having requested a vote thereon, nor any judge having voted to grant the suggestion, and all of the members of the panel having voted to deny a rehearing,

IT IS ORDERED that the petition for a rehearing in the above-entitled cause be, and the same is hereby, DENIED.

EXHIBIT C

Page 71

A. In post officebox—I believe it was box 81.

Q. And what did you do with it sir?

A. I received this envelope from the custody of the acting postmistress, a Selma Senn who extracted it from post office box 81.

Q. And what did you do with it?

A. I initialed it and had her initial it and maintained custody of it.

Q. Until what time?

A. Until such time as it went to the United States Magistrate.

Q. Alright sir, and what did you do at the magistrates?

A. Obtained a search warrant for the envelope and the contents?

Mr. Shaw: Wait just a second, could we approach the bench?

The Court: Alright gentlemen.

(The Following Discussion Was Then Had at Sidebar Outside of the Jury).

Mr. Shaw: Your Honor, the defendant would ask that the jury be discharged and a mistrial declared, because of the government's putting into evidence the constitutional right of the defendant to not be searched or have any of his belongings searched without a search warrant. This is evidence adduced as to his constitutional right, just as much as invoking the right to have a lawyer present and to remain silent, and that by so giving evidence and adducing evidence that a search warrant was issued it infers to the jury that there was reasonable cause

for said search warrant, which is a legal question, which has already been ruled upon by the

Page 72

court, and it puts before the jury the fact that the warrant was providently issued there by creating an inference of guilt as far as the defendant is concerned. It puts before the jury pure and simply the police procedure exercised by the postal inspectors.

Mr. Evers: Well, we have got a right to make a record that what was legal.

Mr. Shaw: That's already been determined.

Mr. Evers: I don't see where he has been prejudiced by the fact that we got a search warrant. There is nothing illegal about getting a search warrant. First of all he hasn't even said it—he said he went to the magistrate's office.

Mr. Shaw: He just said he got a search warrant—I think those were his words.

Mr. Evers: We have got just as much right to prove that we opened that with a search warrant as he does to argue to the jury that we violated his constitutional right in not getting the search warrant, and we have a right to put that before the jury to show that what we did was legal.

Mr. Shaw: Alright now, again I repeat what I said before, in effect what you are doing is by a self serving statement you are having a witness corroborating his own actions.

The Court: You are saying that it would be proper to introduce it?

Mr. Shaw: If I attack it—If I get up in front of this jury and attack it, then it would be proper to come back and prove that * * *

EXHIBIT D

INSTRUCTION NO. 3

Coercion or compulsion may provide a legal excuse for the crime charged in the indictment. In order, however, to provide a legal excuse for any criminal conduct, the compulsion must be present, and immediate, and of such a nature as to induce a well-founded fear of impending death or serious bodily injury; and there must be no reasonable opportunity to escape the compulsion without committing the crime, or participating in the commission of the crime.

If the evidence in the case should leave you with a reasonable doubt whether, at the time and place of the alleged offense, the accused acted, or failed to act, willingly and voluntarily; that is to say, whether the accused was forced in effect to commit or aid in the commission of the crime charged in the indictment by coercion or compulsion, as just explained, then you should acquit the accused.

EXHIBIT E

Page 285

didn't you?

A. No, no, I did not.

Q. Okay, how did you get them?

A. Well, after I paid for the money orders, the postmistress still had the money in her hand and she also had the money orders in her hand, she laid the money orders down and she had the money in her hand, then all of a sudden the door of the post office was opened and two men comes inside, both of them wearing masks.

Q. And what happened then?

A. All I could notice was one man had a red beard. He was pulling it down as he was coming through the door—struggling with some sort of stocking mask and it wasn't too long in length. Then as he was coming in I noticed that Charlotte you know looked up and said "what's going on" and I started backing away from the counter towards the wall and the one with the shotgun comes in and points it at me and another guy comes in with a small hand gun, I don't know what brand—what kind it was, but it was a silver colored hand gun, he also had on a mask and they were both wearing black jackets that day and also after the one holding the gun on me, the other guy comes in, he goes over the counter and Charlotte, she backs away and this guy runs around and opens the door and the other guy with the shotgun motions for me to come inside the room where Charlotte was working in, so I comes inside and he closes the door behind me. I goes over and stands right beside Charlotte. Charlotte never seemed afraid at all of what was going on. She just kept questioning the man. She kept asking, what do you want in here, and then the next thing—or before that when the guy jumped

Page 286

over the counter, she told him to get out of there first and after then Charlotte just kept looking at both of them——

Q. Well, let me interrupt you just a minute, you used a name, what are you saying, Charlotte or Shorty or what?

A. Charlotte—that's Charlotte Wheatley the post mistress.

Q. Is her first name Charlotte?

A. Yes, I have always called her that.

Q. You knew her well?

A. Yes.

Q. She knew you?

A. Yes.

Q. You would speak to each other?

A. That's right.

Q. Alright, go ahead then, just so we know who we are talking about when you say Charlotte.

A. Okay, then I was standing beside Charlotte and the only last words she had a chance to say, was "I think I know"—she pointed to one of the men—the man with the hand gun and he also had a type of object like a tire wrench or tool or something like that in his hand and she said "I think I know" and that's the farthest she ever got to say and he hit her across the mouth with the object and also he strikes her beside the head pushed her down to the floor and then he hands the tool over to the guy who is holding the shotgun and he walks over—or rather the guy with the hand gun walks over to the counter and starts opening up the counter drawers, then the guy with the shotgun says to me—he tells me to take the object

Page 287

that he is holding in his hand and I ask him what for and later on he says "I want you to bash her head in" and I told him that I could not do that and he walks over to me and he thrusts the barrel of the shotgun towards my head and he says "I know where your little boy is at and if you don't do as we tell you to, I'm going to kill him and anybody else that gets into our way." And then I started over to pick up the tool off of the floor because he had placed it on the floor, and I picked it up and he pushed me over towards where Charlotte is and I looked at Charlotte and I knew she was just in pain, she was making awful moaning noises and I just couldn't do that—I just stood there and I was just shaking and I just couldn't, it was just a horrible experience to go through. I just stood there a while and he comes up to me again and thrusts the barrel to my head and says "he is going to blow my brains out all over this place" and then he said "if you haven't forgotten what I said I would do to your little boy" and then it just seemed like everything became black to me and I just started swinging and I just couldn't quit swinging and it was just a horrible experience.

Q. What happened then, after that?

A. After I was swinging and hitting with the tool, I kept hearing him saying "harder" every time I would swing he would say "harder, hit her again" he would keep saying "harder" each time I hit her and it seemed like I came to my senses and I ask him "haven't you done enough already," and finally he makes me drop the tool and walk over into the corner and that's when I thought he was going to blow my head off right then and he walks away over to where the other guy is over there by the counter and I heard

Page 288

one of the men say "there is seventeen dollars and some change" and I don't know if that is exactly true what they were taking

or not, but I heard one of them try and open another drawer and I don't know what took place and I stood there and they told me not to move and I was standing in the corner and all of a sudden they was gone and I don't know how long I stood there and I don't know why I did the things I did. I was just so panicky just thinking about my little boy and all I could think about and I don't even know why I picked up those money orders off of the floor. After he hit her the money orders went all over the floor plus he took the money that I had from Charlotte—the one with the hand gun took my money that Charlotte had in her hand, it was five hundred and six dollars, he took it and he left.

Q. And that was your money that you had paid?

A. That was my money, correct. And really I don't know how long I was standing there, but they was gone and I picked up the money orders and I left. I cannot remember how I left. It was just such an experience that I couldn't cope with it and I don't even know why—I just couldn't contact the right authorities—it was just such an upsetting experience—a horrible experience—I just don't know why I did the things that I did at that time. It just seems like it wasn't real, it just seems like it was all a dream. It just seems like nothing like this could really ever happen. I have never had an experience like that, even though I was a police officer at one time—I just wasn't able to cope with that situation at that time—just the fact that it was all real.

Q. Now let me ask you this, directing your attention back to the night * * *
